

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2313 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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KALOL MUNICIPALITY

Versus

STATE OF GUJARAT  
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Appearance:

MR MI PATEL for Petitioner

MR MA PATEL for Respondent  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/03/2000

ORAL JUDGEMENT

1. Heard Learned Counsel for the parties. It is not  
in dispute that as per the calculation a sum of  
Rs.6,45,211.34 ps. is to be paid by the respondent to

the petitioner as a rebate from the amount of the education cess collected by the petitioner for the period from 1-3-1985 to 15-2-1988. Out of this amount, the respondent deducted a sum of Rs. 3,61,618.12 ps. as and by way of penal interest for the delayed deposit of the amount of education cess collected by the petitioner. In this Special Civil Application, the petitioner has not given out all the necessary detailed facts. The amount of the education cess is collected by the petitioner for the respondent for the period from 1-3-1985 to 15-2-1988 and on which date the amount was deposited with the respondent have not been mentioned at all. In the absence of these material, relevant and essential facts, I fail to see any reason in the action of the petitioner to file this Special Civil Application before this Court. It is nothing but only a wastage of people's money. The respondent has right to deduct from amount of rebate to be paid to the petitioner from the amount of education cess, the amount of the penal interest. This what has been done in this case. Unless the petitioner is satisfied the Court on the basis of material pleadings and documents, no such relief as prayed for can be granted. Thus, by way of filing of this petition which is lacking in material facts, no such relief as prayed for can be granted in favour of the petitioner.

2. The petitioner has failed to discharge heavy onus which lies upon it to show that there was no delay whatsoever in depositing of amount of the education cess collected by it for the respondent. In the absence of this material fact in this Special Civil Application, the action of the respondent to deduct Rs. 3,61,618.12 ps. as and by way of penal interest from the rebate amount payable to the petitioner from the amount of education cess collected by the petitioner cannot be said to be illegal or arbitrary.

3. This Special Civil Application is wholly misconceived. It is not in dispute that the balance amount i.e. Rs.6,45,211.34 as. - Rs. 3,61,618.12 = Rs. 2,83,593.22 as. has already been paid by the respondent to the petitioner. It is also not in dispute that the respondent has power to deduct from amount of rebate payable to the petitioner a sum as and by way of penal interest for delayed deposit of amount of education cess collected by the petitioner for the respondent. In the result this Special Civil Application fails and same is dismissed. Rule discharged. Interim relief, if any, granted earlier stands vacated. No order as to costs.

(S.K.Keshote,J)

(vipul)